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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 0118990-00024														
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<table border="1"> <tr> <td style="width: 45%;">Application Number</td> <td style="width: 45%;">Filed</td> </tr> <tr> <td>10/088,682</td> <td>July 9, 2002</td> </tr> <tr> <td colspan="2">First Named Inventor</td> </tr> <tr> <td colspan="2">Emmerink et al.</td> </tr> <tr> <td colspan="2"> <table border="1"> <tr> <td style="width: 50%;">Art Unit</td> <td style="width: 50%;">Examiner</td> </tr> <tr> <td>2616</td> <td>Raj K. Jain</td> </tr> </table> </td> </tr> </table>			Application Number	Filed	10/088,682	July 9, 2002	First Named Inventor		Emmerink et al.		<table border="1"> <tr> <td style="width: 50%;">Art Unit</td> <td style="width: 50%;">Examiner</td> </tr> <tr> <td>2616</td> <td>Raj K. Jain</td> </tr> </table>		Art Unit	Examiner	2616	Raj K. Jain
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Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

attorney or agent of record.

Registration number 46,402

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

Registration number if acting under 37 CFR 1.34 _____

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NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): EMMERINK, Antonius
Appl. No.: 10/088,682
Conf. No.: 4834
Filed: July 9, 2002
Title: COMMUNICATION SYSTEM AND METHOD
Art Unit: 2616
Examiner: Raj K. Jain
Docket No.: 0118990-024

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF

Sir:

In response to the Final Office Action dated July 5, 2007, Applicant hereby submits this Pre-Appeal Brief along with the attached Notice of Appeal.

REMARKS

I. REJECTION OF CLAIMS 1, 2, 5, 10-15 AND 19-21 UNDER 35 USC 103(A) AS UNPATENTABLE OVER SHIOMOTO IN VIEW OF RAO IS IMPROPER

With respect to claim 1, for example, the Examiner asserts that Shiomoto teaches all of the claimed features except communications system setup and/or disconnect of communications link. The Examiner asserts that Rao teaches this feature.

Applicants respectfully submit that Rao fails to teach or suggest that which the Examiner asserts and that even if Rao did teach that which the Examiner asserts, one of ordinary skill in the art would not have been motivated to have modified Shiomoto in view of Rao to create the claimed invention.

Even if we assume *arguendo* that Rao teaches the alleged feature, Applicants submit that one of ordinary skill in the art would not have been motivated to modify Shiomoto in view of Rao. Rao teaches enhanced security for telephony calls by encrypting communications. These setup procedures for secure communications require steps beyond simple setup steps, leading to overhead.

Shiomoto teaches away from creating overhead. As discussed specifically in column 1, lines 38-50, Shiomoto states that in data communications based on an IP architecture, no dedicated connection is required and data can be transferred by means of an extremely simple procedure. However, under this scheme delay is longer than in an STM-based circuit-switched network, and some overhead is necessary. Shiomoto is contrasting existing systems with the type of system the STM network used Shiomoto, which does not require much overhead. Furthermore, Shiomoto compares the Shiomoto system with an ATM, stating in that an ATM-based data transfers, 5 bytes of a 53 byte cell are overhead, embodiments of the present invention [the Shiomoto systems] do not require such overhead. (See column 7, lines 47-50) And even further, Shiomoto specifically states “The present invention can thus provide STM connections dynamically, on the basis of an STM trunk network based on the UP addresses used in data communications. This has previously only been possible in the case of simple leased lines. It follows that this invention can be used to implement a circuit-switched network in which there is little delay or overhead.” (See column 7, lines 53-59) (emphasis added).

Since, Shiomoto makes it abundantly clear that overhead is a drawback and undesirable, it teaches away from combining a system, such as Rao, that actually causes overhead. Thus, one of ordinary skill in the art would not have been motivated to modify Shiomoto in view of Rao to create the claimed invention.

Additionally, the Action fails to provide proper motivation for combining these references. The Examiner merely states that it would have been desirable to have incorporated the teachings of Rao with Shiomoto, so as to provide a simplified and secure call setup and tear down procedure for voice and data communications amongst different devices with an IP telephony network. Although, using the method taught in Rao might make a system secure, Applicants fail to see how encrypting communications (as taught in Rao) can make them simpler. Encryption by definition would make communications more complex. Furthermore, Applicant fails to see the motivation for making Shiomoto encrypted and thus secure, especially in light of the fact that Shiomoto teaches away from delay and overhead.

Thus, the Examiner has failed to set forth a *prima facie* case of obviousness and this rejection should be withdrawn.

Claim 10 is allowable for the same reasons claim 1 is allowable. The remaining claims are allowable at least due to their respective dependencies. Applicants request that this rejection be withdrawn.

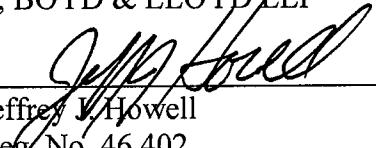
Applicants appreciate the indication that claims 3, 4, 6-9 and 16-18 contain allowable subject matter.

The Commissioner is hereby authorized to charge deposit account 02-1818 for any fees which are due and owing.

Respectfully submitted,

BELL, BOYD & LLOYD LLP

BY


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Reg. No. 46,402
Customer No. 29180

Dated: October 5, 2007